

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**06/30/20
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Ratesetting

TO PARTIES OF RECORD IN CASE 19-05-004:

This is the proposed decision of Administrative Law Judge Gerald F. Kelly. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 6, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:gp2

Attachment

Decision **PROPOSED DECISION OF ALJ KELLY** (Mailed 6/30/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Leisure Lake Homeowners Association,

Complainants,

vs.

Clan Keith Real Estate Investments, LLC
d/b/a Leisure Lake Mobile Estates,

Defendants.

Case 19-05-004

**DECISION DENYING THE COMPLAINT OF LEISURE
LAKE HOMEOWNERS' ASSOCIATION**

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**DECISION DENYING THE COMPLAINT OF LEISURE
LAKE HOMEOWNERS' ASSOCIATION**

Summary

This decision denies the complaint filed May 7, 2019, by Leisure Lake Homeowners' Association (Complainant) versus Clan Keith Real Estate Investments, LLC doing business as Leisure Lake Mobile Estates (Leisure Lake ME or Defendant). Leisure Lake ME provides water and sewer service to tenants of the mobile home park, represented by Complainant. The Complaint alleges that Leisure Lake ME is in violation of Public Utilities Code § 2705.6 by (a) charging a rate for water and sewer service that is excessive in proportion to the cost of service, (b) failing to provide notices to tenants of their rights to complain about changes in rate levels, and (c) failing to properly apply low-income credits on customer bills.

There is no evidence that Defendant Leisure Lake ME has violated provisions of Public Utilities (Pub. Util.) Code § 2705.6, as alleged by Complainant. Therefore, there is no basis upon which the Complaint may be granted by the Commission. The complaint is denied, and this proceeding is closed.

1. Factual and Procedural Background

On May 7, 2019, Leisure Lakes Homeowners Association (Complainant) filed the instant complaint (Case (C.) 19-05-044). The Defendant in this action is Clan Keith Real Estate Investments, LLC doing business as Leisure Lake Mobile Estates (Leisure Lake ME or Defendant Leisure Lake ME provides water and sewer service to the resident tenants of its mobile home park, serving 211 water service connections.

The Complainant (consisting of about 10 percent of the resident tenants of Leisure Lake ME)¹ claims that the rates charged for water and sewer service are too high in proportion to the owner's costs and that this is effectively a financial constructive eviction. Complainants also contend that the Defendant has not provided tenants with proper notices as required under Pub. Util. Code § 2705.6(c)² and Assembly Bill (AB) 1830. Additionally, Complainants allege that the Defendant is not providing appropriate rates for low income residents.

The Complaint seeks (a) an injunction on all charges until the complaint is resolved;³ (b) discounted low-income water and sewer charges be imposed; (c) water rates be aligned with costs of service; and, (d) that Defendant be fined as prescribed in AB 1830 for not providing notice to tenants in the mobile home park of their rights to complain about rate level changes.

Instructions to Answer were served on June 3, 2019. On July 1, 2019, Defendant requested more time to file its Answer (which was granted July 2, 2019). An Answer was filed on July 22, 2019. By email on July 23, 2019, Complainants requested permission to file a reply. The ALJ denied this request.

¹ Complainants are: Ron Renter, Bob Baker, Kathy Russell, Robert Weaver, Sherry Tripoli, Annette Torres, Vincent Consolo, Bernie Coughlyn, Joe Hagen, Dan Petrozzi, Linda Gleason, Marilyn Morrow, James Buck, Michael McEachern, Stan Pratt, Rick McQuown, Mary Perry, Vonalie Bennett, Mark Miller, Mary Ann Raymond, Clara Burgum, Lee Alvarez, and Elain Browne. These individuals represent at least 10% of Leisure Lakes Mobile Estate's water service connections in compliance with the requirements of Pub. Util. Code § 2705.6(a).

² Unless otherwise noted, all subsequent section references herein are to the Public Utilities Code

³ The request for injunction was denied by ruling at the prehearing conference. This decision affirms this ruling. Defendant is not a regulated utility. AB 1830 only provides the Commission with jurisdiction to determine whether the rates being charges are just and reasonable. The Commission does not have jurisdiction to evaluate the rates charged for sewer service, nor does it have the jurisdiction to evaluate whether the Defendant is providing the appropriate low-income rates to eligible tenants.

A prehearing conference (PHC) was held starting at 10:30 a.m., August 12, 2019 at Chimbole Cultural Center – Sage Room, 38350 Sierra Highway, Palmdale, California 93550. The PHC addressed the status, scope and schedule of this proceeding. By bench ruling at the PHC, the assigned ALJ denied Defendant’s request to dismiss the case, noting that Complainants had made an initial showing that the Commission should conduct an investigation to determine whether the rates for water service are reasonable.⁴

On September 6, 2019, Defendant filed a subsequent Motion to Dismiss. On September 16, 2019, Complainants filed an Opposition to the Motion. Pursuant to e-mail ruling of the ALJ on October 15, 2019, Defendant filed an Amended Motion to Dismiss with Prejudice on October 29, 2019. Defendant incorporated by reference its previous Motion to Dismiss and requested that Complainants be fined \$10,000. On November 6, 2019, Complainants filed a response. Disposition of the Motion is discussed separately below.

The assigned Commissioner’s Scoping Memo and Ruling was issued September 26, 2019. Because this proceeding concerns the reasonableness of rates, the Scoping Memo changed the preliminary categorization from adjudicatory to ratesetting. Accordingly, *ex parte* communications in this proceeding are governed by Article 8 of the Commission’s Rules for a ratesetting proceeding.

The Scoping Memo indicated no evidentiary hearings were needed, but directed the Commission’s Water Division (WD) to perform a study of retail water rates charged to residents of Leisure Lake Mobile Home Park pursuant to § 2705.6. To facilitate the investigation, by ruling on August 26, 2019, the ALJ directed Defendant to provide specified data to the WD, to be served on parties

⁴ See Reporter’s Transcript of the PHC at 17.

within 30 days. On September 25, 2019, Defendant submitted responsive data, consisting of 11 emails with 24 attachments. On October 2, 2019, Complainants filed comments regarding the submission of data in response to the ALJ's ruling.

On December 5, 2019, the WD completed its analysis of rates and returned a document titled "Rate Analysis Report" (WD Report) to the assigned ALJ. By ALJ ruling on December 12, 2019, the WD Report was entered into the record and served on parties for review and comment.

Complainants filed and served an opening brief on December 31, 2019. Defendant filed and served a reply brief on January 6, 2020. This decision is issued based upon the record, as described herein, including the WD Report and parties' respective pleadings relating thereto.

2. Scope of Jurisdiction

Since this Complaint relates to rates and service provided by a mobile home park that serves only its own tenants, Commission jurisdiction is limited to the extent delegated in § 2705.6 of the Public Utilities Code which states:

A mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation. However, if a complaint is filed with the commission by tenants of the mobilehome park that represent 10 percent or more of the park's water service connections during any 12-month period, claiming that the water rates charged by the park are not just and reasonable or that the service is inadequate, the commission shall have jurisdiction to determine the merits of the complaint and shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.

Accordingly, § 2705.6 provides for the Commission to adjudicate the issues as identified in the Scoping Memo. The Commission does not have jurisdiction, however, to evaluate the rates that Leisure Lake ME charges for sewer service,

nor to evaluate whether Defendant is providing appropriate low-income rates to eligible tenants. Also, as discussed below, rent control and tenants issues are beyond the scope of the proceeding. Accordingly, this decision makes no findings or disposition with respect to claims dealing with such issues.

As identified in the Scoping Memo, the relevant issues to be resolved in this proceeding are limited to the following:

1. Are the water rates charged by Leisure Lakes ME just and reasonable?
2. Should the rates charged by Leisure Lakes ME be modified?
3. Are complainants due any reimbursement due to excessive rates and if so, in what amounts?
4. Has Leisure Lakes violated provisions of Pub. Util. Code § 2705.6 by failing to provide notices to new tenants at the time they establish service and each time that Leisure Lakes changes water service or rates? If so, should Leisure Lakes be subject to a fine and if so, what amount?
5. Has Leisure Lakes violated the provisions of Pub. Util. Code § 2705.6 by failing to provide tenants of their right to file a complaint with the Commission? If so, should Leisure Lakes be subject to a fine and of what amount?
6. Do any safety issues need to be addressed pursuant to Pub. Util. Code § 451?

3. Motion to Dismiss

As noted above, Defendant filed a Motion to Dismiss based on allegations regarding Complainants' behavior. Defendant argues that summary dismissal with prejudice is warranted based on Complainants behavior. Defendant claims Complainants ignored repeated warnings from Commission staff and the assigned ALJ regarding improper communications. Defendant also claims that Complainants used an administrative procedure to "harass and disparage" Defendant without regard to procedural rules. Defendant additionally claims

that Complainants repeatedly tried to present their case in improper emails and proposed filings resulting in prejudice to Defendant. Defendant also claims that Complainants far exceeded commenting on whether the data submitted is accurate and attempted to have their own evidence introduced. Finally, the Defendant claims that Complainants argued their position outside the hearing room in violation of Rule 1 and § 2113 of the Public Utilities Code⁵. Defendant seeks summary dismissal to prevent further damage to its reputation.

Defendant claims that Complainants misled the Staff by providing unverified information of its own and trying to subvert the proper investigation of his matter. A person who violates Rule 1.1 may be sanctioned in accordance with Code § 2107.

Complainants oppose the Motion, arguing that the Defendant attempts to justify dismissal by attacking their participation in the process and casting aspersions on their veracity. Complainants claim that Defendants engaged in personal ad hominem and procedural attacks rather than presenting facts mitigating Defendant's violation of AB 1830. Complainants point out they are senior citizens and are not attorneys. They hired no attorney to work on the complaint.

3.1 Discussion

This decision declines to grant the Motion to Dismiss. Dismissing a case with prejudice, as requested by Defendants, would mean that this matter is dismissed, as a matter of law and without considering factual evidence. Under a dismissal with prejudice, Complainant could not bring the matter back before the Commission.

⁵ Pursuant to Rule 1.1 of the Commission's Rules of Practice and Procedure, any person who transacts business with the Commission may never mislead the Commission or its staff by an artifice or false statement of fact or law.

The arguments offered by Defendant in its Motion do not warrant summary dismissal. The Complainants behavior did not rise to the level of a Rule 1 violation that warrants punitive sanctions. Complainants did not have a willful intent to mislead the Commission or disregard Commission's rules. Complainants are not attorneys and have no prior experience with Commission rules, but are seniors trying to navigate through a regulatory proceeding.

Defendant's due process rights have not been denied because of alleged behavior of the Complainant. Also, as previously noted, Complainants made an initial showing that the Commission should conduct an investigation to determine whether the rates are reasonable. Accordingly, this decision denies the Motion and does not impose a monetary penalty for Complainant's alleged behavior. This decision addresses Complainants' claims based on the factual record, including the WD Report, as discussed below.

4. Reasonableness of Water Service Rates

Among other things, § 2705.6 requires the Commission to adjudicate the complaint at issue here, and to determine whether the rates charged by defendant Clan Keith Real Estate Investments, LLC doing business as Leisure Lake Mobile Estates pursuant to § 2705.6 are just and reasonable.

4.1 Position of Complainants

Complainants claim that Defendant Leisure Lake ME is overcharging the tenants of the mobile home park relative to the cost of water service. Complainants claim that tenants should be paying for water usage as determined by meters at the water wells used to provide service.⁶ Complainants note that

⁶ Complainants refer to the "Antelope Valley Water Judgement" as authority for this claim but provide no legal citation to identify the reference or to show whether or how it is relevant controlling authority in adjudicating this proceeding.

Defendant has installed individual water meters based on a claimed requirement to do so.

Complainants point to the WD Report findings claiming that WD did not expressly say the Leisure Lake ME water rates were “just and reasonable” based upon all the “facts and circumstances” surrounding the complaint. Complainants argue that inherent in the word “just” is something that is “lawful” and inherent in the word “reasonable” is the word “fair”.

Complainants concede that rates may be considered “reasonable” only in relation to new tenants that sign new rental agreements that: a) do not state that “water and sewer” service is included in rent and (b) identify water and sewer charges to be paid on a monthly basis. Complainants take issue, however, with the WD Report finding that current water and sewer rates are “reasonable”.

Complainants argue that the WD Report did not comply with the mandate in the Commissioner’s Scoping Memo regarding water quality or adequate service, or the intent of AB 1830.

Complainants argue that the WD Report’s focus did not consider the context the complaint between landlord and tenant regarding their legal contract that includes water and sewer in the tenant’s rent. Complainants argue that an additional water charge can never be “just and reasonable” to tenants at Leisure Lake as water and sewer service is already paid for in their rent bill. Complainants claim the rates found reasonable in the WD report are almost double what tenants already pay in their rental contracts.

Complainants also claim they were not allowed to be fully involved in the complaint process, and especially in the WD’s rate determination process. Complainants claim that the WD was only allowed to use water cost and usage data supplied by Defendant. Complainant claims that WD was allowed to communicate directly with Defendant, but this interaction not made public.

Complainants claim they asked the assigned ALJ to see the exact water usage data given to the WD by the Defendants but were told all data is in the WD report. Complainants argue they would have liked to comment on the validity of the water usage data supplied to the WD.

On December 11, 2019, a California Public Records Request for all the water data received and used by the WD in this case was submitted but this request was denied. The Commission stated that this data request “is covered by the deliberative process privilege, as the assigned ALJ is currently utilizing the information as part of his decision making process.” This public records denial also stated the water division staff working on this case only had “communication regarding the proceeding ...with the assigned ALJ.”

Complainants claim this is not correct, however, citing an October 2, 2019 email from Defendants attorney to the ALJ which shows that the WD analyst who prepared the report telephoned the Defendant to discuss the water data. Complainants argue that the content of this conversation was not made public to the service list in spite of an August 27, 2019 email from ALJ Kelly stating the “Water Division individual is assigned to the matter as an advisory individual.....Therefore, it is inappropriate for either party to attempt to contact the advisory person assigned to this proceeding.” (see Exhibit 4)

Complainants do not dispute the ratemaking methodology used in the WD Report, but question the water usage figures provided by Defendant claiming this data was not verified. Complainants argue that Defendant should show water meter reading for each of the 211 mobile home meters for each month taken and the dates these individual meters were installed.

4.2 Position of Defendant

Defendant Leisure Lake ME denies charging excessively high water rates. Leisure Lake ME states it is not aware of the controlling authority of the

Antelope Valley Water Basin Judgment as it pertains to water rates at Leisure Lake ME.

Defendant Leisure Lake ME supports the WD Report findings, arguing that the Commission should find the water rates charged at Leisure Lake ME just and reasonable. Defendants dispute Complainants' comments characterizing their interpretation of the WD Report as "tortured" in reference to the claimed meaning of the word "fairness".

Defendants take issue with Complainant's attempt to raise legal issues related to leases in asserting that the WD did not comply with the Assigned Commissioner's Scoping Memo by not considering the context of the landlord/tenant contract that includes water and sewer service in rent. Defendant notes that rent control and tenants issues are beyond the scope of the proceeding, as noted at the PHC.⁷

4.3 Discussion

As noted above, the scope of this proceeding excludes issues relating to the terms of what may be included within landlord/tenant rental contracts. Likewise, the issue of rates for sewer service is outside the scope of this proceeding. On this basis, the scope of the WD Report was limited accordingly.

The WD Report findings provide an appropriate and adequate basis to determine whether Leisure Lake ME rates for water service are excessive relative to costs.⁸ The analysis of the WD is in accordance with the previously referenced August 26, 2019 ALJ Ruling. Contrary to claims of Complainants in

⁷ See PHC Reporter's Transcript, August 12, 2019, at 213, lines 91-11

⁸ Because Complainant provided only a vague reference to the "Antelope Valley Water Basin Judgement", this decision finds insufficient basis to ascertain whether or how this reference may inform our decision in this proceeding.

their brief, the WD Report expressly found the rates charged by Leisure Lake ME to be “reasonable”.⁹

The data, methodologies and calculations that the WD used in conducting its analysis and finalizing its report is reasonable. No party identified anything in the WD Report to call into question its findings. Complainants have had a reasonable opportunity to be heard and participate in connection with the WD investigation and report. Complainants were duly served with a copy of the responsive data provided by Defendant to the WD for its rate analysis. Complainant had due opportunity to review the data, file a brief and to express opinions regarding the accuracy and relevance of the data. Complainants identified no factual errors nor conceptual flaws in the data or methodologies used by the WD.

The WD conducted its analysis of Leisure Lake’s water rates using the cost-of-service ratemaking methodology and criteria for a Class C and D Commission-regulated water utilities following the guidelines in relevant Standard Practice documents.¹⁰ Since Leisure Lake ME serves only 211 service connections, it is reasonable to compare Leisure Lake ME water rates to those of a Commission-regulated Class D water utility with less than 500 service connections.¹¹

To assess the reasonableness of the water rates in relation to costs, the WD reviewed operating and maintenance (O&M) expenses of Leisure Lake ME’s

⁹ See WD Report, at 1.

¹⁰ See: Standard Practice (SP) U-9-SM for *Processing Informal General Rate Cases of Small Water and Sewer Utilities*; SP U-3-SM for *Preparing Results of Operation Reports for General Rate Increase Requests of Water Utilities Other Than Major Companies*; and SP U-7-W: *Rate Design for Water and Sewer System Utilities Including Master Metered Facilities*.

¹¹ As defined in General Order 96-B Water Industry Rules Section 1.2, Class C and D water utilities serve 501 through 2,000, and less than 500 service connections, respectively.

water system operations. These O&M expenses are estimated to be \$57,026¹² annually, which are considered comparable to O&M expenses used in determining revenue requirement and rates in General Rate Cases for Commission-regulated Class D water utilities. The functional categories of O&M expenses considered in the WD cost-of-service rate analysis are shown in Table 1 below:

Table 1

Estimated Annual Operation and Maintenance Expenses			
	Service or Vendor	Purpose	Annual Cost
1	The Plumber	Main stoppage	\$ 95
2	Skookum h20	Rebuild chlorine pump	\$ 360
3	Skookum h20	Chlorination set-up	\$ 1,885
4	Skookum h20	Water system operators/water testing/monitoring	\$ 17,674
5	Skookum h20	Reports/additional testing	\$ 735
6	Smith Park and Supply	Valve repairs and parts	\$ 696
7	G&M Handyman	Water main repair	\$ 1,300
8	Keith's Plumbing	Replace water riser	\$ 475
9	Park Utilities	Water risers for one year (\$4,000/12)	\$ 2,667
10	Park Utilities	Annual water meter lease (\$993/month)	\$ 11,916
11	Southern California Edison	Well & pump electricity charges	\$ 9,513
12	State Water Resources Control Board	Annual water system fee	\$ 1,266
13	Water Replacement Costs	Antelope Valley (\$7,681 + \$443)	\$ 8,124
14	Antelope Valley Watermaster		\$ 320
		Total	\$ 57,026
* O&M costs based on 2018 and 2019 expense data			

The Commission's ratemaking policy for determining revenue requirements and rates for Class C and D regulated water utilities, as adopted by Decision (D.) 92-03-093, is to use the Rate of Return (ROR) and Rate of Margin (ROM) methods.¹³ Leisure Lake ME serves 211 service connections.

¹² Leisure Lake's invoices for its operating expenses based on 2018 and 2019 data were provided in response to the ALJ's August 26, 2019 Ruling.

¹³ See D. 92-03-093 and Resolution W-4524 and Standard Practice U-3-SM.

WD used the ROM methodology as applicable for setting rates for Class D water utilities with less than 500 service connections for its cost-of-service analysis. The revenue requirement under the ROM method is based on overall utility expenses including O&M and depreciation expenses, income and other taxes, plus an operating margin percentage. The use of the ROM methodology is reasonable in the context of the WD analysis for this proceeding.

The WD did not use the ROR method for its analysis. The revenue requirement and rates under the ROR method are based on the net-dollar investment of the utility (*i.e.*, the rate base). The rate base is calculated by starting with plant in service, subtracting accumulated depreciation of plant, deferred income tax reserve, contributions and advances, and adding working cash plus materials and supplies.¹⁴ The utility revenue requirement is determined by applying a ROR on rate base.

An analysis based on the ROR method would have required reconstructing the utility plant-in-service records to make an accurate and reasonable rate base estimate. The WD would have to delve into plant construction timelines and cost records and make multiple assumptions as to the age of infrastructure for calculating accumulated depreciation. Use of the ROM ratemaking method avoids these complexities, and results in a reasonable comparison between Leisure Lake ME and a Commission-regulated Class D water utility. Use of the ROM method usually yields a higher revenue requirement because Class D water utilities typically have a small amount of rate base and/or most of their utility plant has been depreciated. The formula for the revenue requirement under the ROM ratemaking method is:

¹⁴ For more information on the methodology for calculating rate base, *see* Standard Practice U-5-SM.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M039/K595/39595200.PDF>

$$RR = O\&M + D + T + ROM*(O\&M + D)$$

Where:

RR= Revenue Requirement

O&M = Operating and Maintenance Expense

D= Depreciation

T= Income and Other Taxes

ROM = Rate of Margin

For 2019, the WD's recommended ROM for Class D water utilities is 23.65 percent.¹⁵ Using this figure, the WD calculated a revenue requirement for Leisure Lake ME of \$82,300. This revenue requirement is based on annual operating expenses of \$57,026 (as noted above) and applicable taxes, as shown in Table 2 of the WD Report, reproduced below:

Table 2

Summary of Earnings			
1	Revenue Requirement	\$	82,300
2	Operating Expenses	\$	57,026
3	Taxes Other Than Income	\$	6,545
4	State Income Taxes	\$	1,656
5	Federal Income Taxes	\$	3,585
6	Total Deductions	\$	68,812
7	Net Income	\$	13,488
8	Rate Of Margin		23.65%

¹⁵ Water Division's February 29, 2019 memorandum on the recommended Rates of Return and Rates of Margin for Class C and D Water and Sewer Utilities.

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Water/2019%20Rates%20of%20Return%20and%20Rates%20of%20Margin%20for%20Classes%20C%20and%20D%20Water%20Utilities.pdf

Under Commission ratemaking policy for Class D water utilities, up to 100 percent of fixed operating costs may be recovered through a service charge.¹⁶ Accordingly, the WD used 100% cost recovery of fixed costs in its service charge calculation.¹⁷ Table 3 below shows WD's calculation of fixed costs of \$52, 877, as follows:

Table 3

DETERMINATION OF FIXED COSTS		
1	Gross revenues at recommended rates	\$82,300
	Less:	
2	Purchased power	\$9,513
3	Purchased water	\$8,124
4	Other volume related	\$0
5	Income, Property, & Franchise Taxes	\$11,786
6	Uncollectibles	\$0
7	FIXED COSTS	\$52,877

Using the ROM ratemaking methodology, Leisure Lake ME's O&M expenses associated with its water system operations, and water usage data (included in the Report), the WD computed a monthly service charge of \$20.88 and quantity rate of \$2.48 per hundred cubic feet (CCF), as shown in Table 4 below:¹⁸

¹⁶ D.92-03-093, Ordering Paragraph No. 6.

¹⁷ Fixed costs are those costs that do not change with the amount of water delivered and includes profit, SP-U-7-W at 2.

¹⁸ For determining the quantity rate, the WD estimated an annual water usage of 11,844 CCF based on data provided by Leisure Lake for February through September 2019. The water usage data used for calculating the quantity rate is provided in Appendix B of the WD Report.

Table 4

SERVICE AND QUANTITY CHARGE CALCULATION			
	% of fixed costs recovered in service charge		100%
1	To be recovered through service charge		\$52,877
2	To be recovered through commodity rate		\$29,423
3	Total		\$82,300
4	Number of Service Connections		211
	<u>SERVICE CHARGE</u>		
5	Per service connection/year		\$251
6	Per service connection/month		\$20.88
	Estimated Annual Water Usage (CCF)		11,844
	<u>QUANTITY RATE</u>		
7	Quantity Rate per CCF		\$2.48
8	Estimated Avg. Monthly Usage per Connection (CCF)		4.68

For determining the quantity rate, the WD estimated annual water usage of 11,844 hundred cubic feet (CCF),¹⁹ based on data provided by Leisure Lake ME for February through September 2019. To compute a full year of water usage data, the WD assumed the same water consumption for the September 15th through November 15th period as in the August 15th through September 15th period of 127,490 cubic feet (CF), and for the November 15th through February 15th period the same water consumption as in the February 15th through March 14th period of 71,757 CF.²⁰

Based on cost recovery of \$29,423 through the quantity rate (as shown in Table 4 above), and estimated annual water usage of 11,844 CCF, the WD computed a quantity rate of \$2.48 per CCF. Therefore, the estimated monthly bill

¹⁹ One CCF equals 748.1 gallons.

²⁰ The water usage data used for calculating the quantity rate is provided in Appendix B of the WD Report.

for a Leisure Lake customer using an average water usage of 4.68 CCF and the service and quantity rates computed by the WD would be \$32.51.

If Leisure Lake ME were a Class D water utility, an average monthly bill based on an average use of 4.68 CCF would be \$32.51. This amount compares to Leisure Lake ME's actual monthly charge of \$20.00 for service and \$5.85 for average usage of 4.68 CCF per connection, for a total bill of \$25.85. At greater quantity usages, the differences between a theoretical Class D water utility and Leisure Lake ME's bill would be greater. Table 5 below provides the Leisure Lake ME monthly bill calculation.

Table 5

Leisure Lake Monthly Water Bill				
	Usage in CCF	Service Charge	Quantity Charge	Total
Average	0	\$20.88	\$0.00	\$ 20.88
	2	\$20.88	\$4.97	\$ 25.85
	4.68	\$20.88	\$11.63	\$ 32.51
	6	\$20.88	\$14.91	\$ 35.79
	8	\$20.88	\$19.87	\$ 40.76
	10	\$20.88	\$24.84	\$ 45.73

Consequently, in view of this analysis of Leisure Lake ME costs presented in the WD Report, it is concluded that Leisure Lake's water rates are just and reasonable. Accordingly, there is no basis to order any change in existing water rates charged by Leisure Lake ME, or to impose fines or penalties, as requested by Complainant.

5. Requirements for Notices to Mobile Home Park Tenants

As noted in the Scoping Memo, one of the issues in the proceeding is whether Leisure Lakes ME violated § 2705.6 by failing to provide notices to new tenants at the time they establish service and each time that Leisure Lakes

changes water service or rates. A related issue identified in the Scoping Memo is whether Leisure Lakes violated § 2705.6 by failing to provide tenants of their right to file a complaint with the Commission. If so, the decision would consider whether Leisure Lakes ME should be subject to a fine.

Complainant claims that Defendant is in violation of statutory requirements by never giving notice to each tenant or posting a notice of tenants' right to complain about new water service rates from the period November 21, 2017 to the date of the Complaint filing. Complainants ask that a penalty be imposed of \$500 to \$50,000 for each offense.

Defendant denies that any penalties are warranted in this regard, but acknowledges that it has, in the past, included water as part of tenants' rent. Leisure Like ME reduced tenants' rent, however, so that water rates could be charged separately.

5.1 Discussion

Based on the information provided in response to the ALJ ruling, there is no evidence that Leisure Lake ME failed to provide due notice to tenants of increases in water service rates. In Attachment 3 of the Complaint, the increase that occurred on October 21, 2017 was identified as a *rent increase*, not a water rate change. Such rent control and tenants issues are beyond the scope of the proceeding, as noted at the PHC. Accordingly, there is no basis to impose penalties based on claims of lack of notice of a water rate increase.

Based on the record, there is no evidence to conclude that Complainants were denied notice of their right to file a complaint. Moreover, since Leisure Lake ME water rates are found just and reasonable, there is no evidence that Complainants suffered harm as a result of not filing a complaint sooner. Accordingly, the decision declines to impose penalties based on this claim.

6. Safety Issues

Another issue identified in the Scoping Memo is whether there are safety issues that need to be addressed as a result of this proceeding pursuant to § 451.

The WD Report described Leisure Lake ME water distribution system as follows. The water distribution system consists of two water wells (Well #1 and #2), a 108,000-gallon steel storage tank, and a hydro-pneumatic tank, and two pump stations.²¹ Well #1 is the main source of water supply with an estimated capacity of 175 gallons per minute. Well #2 has been off-line due high levels of arsenic that exceed the allowable maximum contaminant levels for potable water use. In 2018, Leisure Lake ME completed installation of an arsenic treatment facility.²² Approval of the permit amendment authorizing use of this well is pending before the State Water Resources Control Board. Once the permit amendment is approved, Well #2 will return on-line for use as a secondary supply source for the water distribution system.

Based on the information provided in the WD Report, this decision concludes that there are no safety-related issues identified in this proceeding that need to be addressed.

7. Comments

The proposed decision of ALJ Kelly in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

²¹ May 13, 2015 State Water Resources Control Board Sanitary Survey.

²² The arsenic treatment facility was funded through Proposition 84 grant funds.

8. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Gerald F. Kelly is the assigned Administrative Law Judge and presiding officer in this proceeding.

Findings of Fact

1. Clan Keith Real Estate Investments, LLC doing business as Leisure Lake Mobile Estates is a mobile home park that serves 211 water service connections in the mobile home park from its water distribution system.

2. A group of about 10 percent of the tenant residents of the Leisure Lakes Homeowners Association who are served by Leisure Lake Mobile Estates, filed C.19-05-044.

3. The Commission's Water Division (WD) conducted an independent analysis of the water service rates charge by Leisure Lake to 211 service connections by using the cost-of-service ratemaking methodology and criteria for Class D Commission regulated water utilities following the guidelines provided in the WD's Standard Practice documents.

4. The Water Division Report, as submitted in this proceeding, provides an appropriate and adequate basis to determine whether Leisure Lake ME rates for water service are just and reasonable in relation to costs.

5. The Water Division Report employed the Rate of Margin ratemaking method in its cost-of-service rate analysis of Leisure Lake ME's water rates.

6. Use of the Rate of Return methodology for analyzing rate levels in this proceeding would require reconstructing plant construction timelines and costs records and making a significant number of assumptions on the age of the infrastructure for calculating accumulated depreciation in order to make a reasonable rate base estimate.

7. In most instances, the Rate of Margin method yields a higher revenue requirement than the Rate of Return method due to Class D water utilities

having a small amount of rate base and/or most of their utility plant investment has been depreciated.

8. Using the Rate of Margin ratemaking methodology, Leisure Lake ME's operating and maintenance expenses associated with its water distribution operations, and water usage data, the Water Division computed a monthly service charge of \$20.88 and quantity rate of \$2.48 per hundred cubic feet (CCF).

9. If Leisure Lake ME were a Class D water utility an average monthly service charge based on an average quantity use of 4.68 CCF would be \$32.51. This amount compares to Leisure Lake ME's actual monthly charge of \$20.00 for service and \$5.85 for average usage of 4.68 CCF per connection, for a total bill of \$25.85.

10. Based on the favorable comparison of water rates charged by Leisure Lake ME with the amounts calculated in the Water Division Report for a Class D water utility, there is no evidence that the Defendant's rates for water service are unreasonable or excessive.

11. There is no evidence to conclude that Defendant failed to provide its tenants with due notice of their rights to complain as required by Pub. Util. Code § 2705.6.

12. There is no basis to impose a fine of \$10,000 on Complainants for patterns of behavior as alleged in the Motion to Dismiss.

13. There is no basis to impose a fine of from \$500 to \$5,000 on Defendants for alleged violations of provisions of Public Utilities Code § 2705.6.

14. The increase that Leisure Lake tenants experienced on October 21, 2017 was identified as a *rent increase*, not a water rate change. Since rent control and tenants' issues are beyond the scope of the proceeding, there is no basis to find that Defendant violated Public Utilities Code § 2705.6 relating to notice of water rate increases.

15. Based on the WD Report, there are no safety-related issues identified in this proceeding that need to be addressed.

Conclusions of Law

1. Pub. Util. Code § 2705.6 prescribes the Commission's jurisdiction with respect to the provision of water service by a mobile home park from water supplies and facilities it owns.

2. The Commission has jurisdiction to adjudicate the instant complaint under Pub. Util. Code § 2705.6 insofar as it relates to the reasonableness of retail rates charged to tenants of Leisure Lake Mobile Estates for water service.

3. The Commission does not have jurisdiction to adjudicate complaints as to the rates charged to tenants of Leisure Lake ME for sewer service, or to adjudicate whether Defendant is providing appropriate low-income rates to eligible tenants.

4. Because Complainants have made an initial showing that the Commission should investigate whether the rates are reasonable or not, and Defendant's due process rights have not been violated, the Amended Motion to Dismiss with prejudice, as filed by Defendant, should be denied.

5. Because Complainant has not provided evidence that Leisure Lake ME is charging unreasonable rates, the request calling for reductions in water rates should be denied.

6. Defendant has not provided a basis to warrant summary dismissal of this proceeding with prejudice.

7. Complainant has not provided a basis to warrant a Commission order imposing any penalties on Defendant.

8. Upon adoption of the instant decision, this proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Case 19-05-004, filed on May 7, 2019, by Leisure Lake Homeowners' Association (Complainant) is denied.
2. The Amended Motion to Dismiss the Complaint with prejudice filed by Clan Keith Real Estate Investments, LLC (Defendant) is denied.
3. Case 19-05-004 is closed

This order is effective today.

Dated _____, at Napa, California.